TEXT OF COURT DECISION ON FOUR STATES' SEGREGATION

WASHINGTON, May 19 — (USIS) — Following is the text of the opinion delivered Monday by Chief Justice Warren on cases involving racial segragation in schools in the states of Kansas, South Carolina, Virginia and Delaware:

"These cases come to us from the states of Kansas, South Carolina, Virginia and Delaware. They are premised in different factors and different local conditions, but a common legal question justifies their consideration together in this consolidated opinion.

"In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in obtaining admission to the public schools of their community on a non-segregated basis. In each instance, they had been denied admission to schools attended by White children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the fourteenth amendment. In each of the cases, other than the Delaware case, a three-judge Federal District Court denied relief to the plaintiffs on the so-called 'separate but equal' doctrine announced by this court in Plessy V. Ferguson 163 U. S. 537. Under that doctrine, equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate. In the Delaware case, the Supreme Court of Delaware adhered to that doctrine, but ordered that the plaintiffs be admitted to the White schools because of their superiority to Negro schools.

"The plaintiffs contend that segregated public schools are not 'equal' and that hence they are deprived of the equal protection of the laws. Because of the obvious importance of the question presented, the court took jurisdiction. Argument was heard in the 1952 term and reargument was heard this term on certain questions propounded by the court.

"Reargument was largely devoted to the circumstances surrounding the adoption of the fourteenth amendment in 1868. It covered exhaustively consideration of the amendment in Congress, ratification by the states, then existing practices in racial segregation, and the views of the proponents and opponents of the amendment. This discussion and our own investigation convince us that, although these sources cast some light, it is not enough to resolve the problem with which we are faced. At best, they are inconclusive. The most avid proponents of the post-war amendments undoubtedly intended them to remove all legal distinctions among 'all persons born or naturalized in the United States.' Their opponents, just as certainly, were antagonistic to both the letter and the spirit of the amendments and wished them to have the most limited effect. What others in Congress and the state legislatures had in mind cannot be determined with any degree of certainty.

"An additional reason for the inconclusive nature of the amendment's history, with respect to segregated schools, is the status of public education at that time. In the south, the movement toward free common schools, supported by the general taxation, had not yet taken hold. Education of White children was largely in the hands of private groups. Education of Negroes was almost nonexistent and practically all of the race were illiterate. In fact, any education of Negroes was forbidden by law in some states. Today, in contrast, many Negroes have achieved outstanding success in the arts and sciences as well as in the business and professional world. It is true that public education had already advanced further in the north, but the effect of the amendment on northern states was generally ignored in the Congressional debates. Even in the north, the conditions of public education did not approximate those existing today. The curriculum was usually rudimentary; ungraded schools were common in rural areas; the school term was but three months a year in many states; and compulsory school attendance was virtually unknown. As a consequence, it is not surprising that there should be so little in the history of the fourteenth amendment relating to its intended effect on public education.

"In the first cases in this court construing the fourteenth amendment, decided shortly after its adoption, the court interpreted it as prescribing all state-imposed discriminations against the Negro race. The doctrine of 'sparate but equal' did not make its appearance in this court until 1896 in the case of Plessy V. Ferguson, supra, involving not education but transportation. American courts have since labored with the doctrine for over half a century. In this court, there have been six cases involving the 'separate but equal' doctrine in the field of public education. In Comming V. Country Board of Education 175 U. S. 528 and Gong Lum V. Rice 275 U. S. 78, the validity of the doctrine itself was not challenged. In more recent cases, all on the graduate school level, inequality was found in that specific benefits enjoyed by White students were denied to Negro students of the same educational qualifieations. In none of these cases was it necessary to re-axamine the doctrine to grant relief to the Negro plaintiff. And in Sweatt V. Painter, supra, the court expressly reserved decision on the question of whether Plessy V. Ferguson should be held inapplicable to public education.

"In the instant cases, that question is directly presented. Here, unlike Sweatt V. Painter, there are findings below that the Negro and White schools involved have been equalized or are being equalized with respect to buildings, curricula, qualifications and salaries of teachers, and other 'tangible' factors. Our decision, therefore, cannot turn on merely a comparison of these tangible factors in the Negro and White schools involved in each of the cases. We must look instead to the effect of segregation itself on public education.

"In approaching this problem we cannot turn the clock back to 1868 when the amendment was adopted, or even to 1896 when Plessy V. Ferguson was written. We must consider public education in the light of its full development and its present place in American life throughout the nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

"Today, education is perhaps the most important functions of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values in preparing him for later professional training and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

"We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other tangible factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

"In Sweatt V. Painter, supra, in finding a segregated law school for Negroes could not provide them equal educational opportunities, this court relies in large part on 'those qualities which are incapable of objective measurement but which make for greatness in a law school.' In McLaurin V. Oklahoma state regents, supra, the court, in requiring that a Negro admitted to a White graduate school be treated like all other students, again resorted to intangible considerations: '...His ability to study, to engage in discussions and exchange views with other students and in general to learn his profession.' Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs

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number of families for which such structures may be built may be regulated.[212]

"It is needless to . . . analyze and enumerate all of the factors which make a single family home more desirable for the promotion and perpetuation of family life than an apartment, hotel, or flat. It will suffice to say that there is a sentiment practically universal, that this is so. But few persons, if given their choice, would, we think, deliberately prefer to establish their homes and rear their children in an apartment house neighborhood rather than in a single home neighborhood. The general welfare of a community is but the aggregate welfare of its constituent members and that which tends to promote the welfare of the individual members of society cannot fail to benefit society as a whole. The entrance of one apartment house or flat into a district usually means the entrance of others, and while it may mean an enhancement of value of the adjacent property for the building of similar structures, it detracts from the value of neighboring property for home building. The man who is seeking to establish a permanent home would not deliberately choose to build next to an apartment house, and it is common experience that the man who has already built is dissatisfied with his home location and desires a change. In other words, the apartment house, tenement, flat, and like structures tend to the exclusion of homes. The home owner may move to another district but this may not be a sufficient solution . . . (of) his problem, for if no protection can be given to strictly home districts — such as is contemplated by a comprehensive and properly constructed zoning plan — he may be forced by the ever-increasing encroachment of apartments and flats to relinquish, if not altogether abandon, the benefits emanating from a permanent home site."[213]

"With particular reference to apartment houses, it is pointed out that the development of detached house sections is greatly retarded by the coming of apartment houses, which has sometimes resulted in destroying the entire section for private house purposes; that in such sections very often the apartment house is a mere parasite, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district. Moreover, the coming of one apartment house is followed by others, interfering by their height and bulk with the free circulation of air and monopolizing the rays of the sun which otherwise would fall upon the smaller homes, and bringing, as their necessary accompaniments, the disturbing noises incident to increased traffic and business, and the occupation, by means of moving and parked automobiles, of larger portions of the streets, thus detracting from their safety and depriving children of the privilege of quiet and open spaces for play enjoyed by those in more favored localities — until, finally, the residential character of the neighborhood and its desirability as a place of detached residences are utterly destroyed. Under these circumstances, apartment houses, which in a different environment would be not only entirely unobjectionable but highly desirable come very near to being nuisances."[214]

"Discussion of, and reason for, rule. — Restriction of the use of land to buildings each to be occupied as a residence for a single family may be viewed at least in two aspects. It may be regarded as preventive of fire. It seems to us manifest that, other circumstances being the same, there is less danger of a building becoming ignited if occupied by one family than if occupied by two or more families. Any increase in the number of persons or of stoves or lights under a single roof increases the risk of fire. A regulation designed to decrease the number of families in one house may reasonably be thought to diminish that risk. The space between buildings likely to arise from the separation of people into a single family under one roof may rationally be thought also to diminish the hazard of conflagration in a neighborhood . . . It may be a reasonable view that the health and general physical and mental welfare of society would be promoted by each family dwelling in a house by itself. Increase in fresh air, freedom for the play of children and of movement of adults, the opportunity to cultivate a bit of land, and the reduction in the spread of contagious diseases may be thought to be advanced by a general custom that each family live in a house standing by itself with its own curtilage. These features of family life are equally essential or equally advantageous for all inhabitants, whatever may be their social standing or material prosperity. There is nothing on the face of this by-law to indicate that it will not operate indifferently for the general benefit. It is a matter of common knowledge that there are in numerous districts plans for real estate development involving modest single-family dwellings within the reach as to price of the thrifty and economical of moderate wage earning capacity."[215]

"The power is not an inherent one, it must be expressly granted or rise by necessary implication, and in many instances the existence of the power has been denied, as for instance, prohibiting the erection of four-story apartment houses, prohibiting the erection of frame office buildings, prohibiting the erection of one-story buildings within a particular district, prohibiting the erection, within a specified district, of buildings to be used by more than one family, prohibiting the erection of a four-family flat within a residential district, prohibiting the erection of two-family houses within a district. In any event the power must be exercised within its scope. Thus, a regulation providing that no buildings shall be erected, altered, or used as a residence for more than one family, but not regulating the size of the lot or specifying how far buildings shall be separated, is not authorized by statute authorizing municipalities to regulate the location of industries and buildings with a view to promote the public health, safety, and general welfare. Also, authority to regulate the 'manner and method of building' does not authorize the restriction of the location of one-story buildings. The regulations must have the tendency to promote the health, safety, or general welfare. The power must be exercised reasonably, not arbitrarily, and without discrimination, although reasonable classification may be permitted."[216]

212 43 C. J. 338-368.
213 Miller v. Los Angeles Bd. of Public Works, 195 Cal. 477, 493, 234 P 881.
214 Euclid v. Ambler Realty Co., (U.S.) 47 Sup. Ct. 114.
215 Brett v. Brookline Bldg., Comr., 250 Mass. 73, 78, 145 N.E. 269.
216 43 C. J. 339-340.

(To be continued)

TEXT OF COURT . . . *(Continued from page 220)*

"Segregation of White and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of the law, therefore, has a tendency to retard the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racially integrated school system."

Whatever may have been the extent of psychological knowledge at the time of Plessy V. Ferguson, this finding is amply supported by modern authority, any language in Plessy V. Ferguson contrary to this finding is rejected.

We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the fourteenth amendment.

Because these are class actions, because of the wide applicability of this decision, and because of the great variety of local conditions, the formulation of decrees in these cases presents problems of considerable complexity. On reargument, the consideration of appropriate relief was necessarily subordinated to the primary question — the constitutionality of segregation in public education. We have now announced that such segregation is a denial of the equal protection of the laws. In order that we may have the full assistance of the parties in formulating decrees, the cases will be restored to the docket, and the parties are requested to present further argument on questions 4 and 5 previously propounded by the court for the reargument this term. The Attorney-General of the United States is again invited to participate. The public education will also be permitted to appear as amici curiae upon request to do so by September 15, 1954, and submission of briefs by October 1, 1954.

It is so ordered.